

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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KEVIN MARK KELSAY,

Plaintiff,

Case No. 20-cv-1712-pp

v.

WISCONSIN STATE PUBLIC DEFENDER,

Defendant.

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**ORDER REMINDING PLAINTIFF OF OPTION TO FILE AMENDED  
COMPLAINT IN LIEU OF RESPONDING TO DEFENDANT’S MOTION TO  
DISMISS (DKT. NO. 7)**

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On May 26, 2021, the defendant filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 7. The defendant argues that the Wisconsin Department of Workforce Development is the exclusive forum for the plaintiff to bring a Wisconsin Fair Employment Act claim and that the plaintiff’s claim against the State Public Defender for violations of the Americans with Disabilities Act is barred by the Eleventh Amendment. Dkt. No. 8 at 6-10.

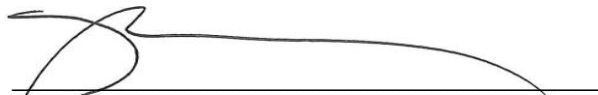
Under Civil Local Rule 7(b), if the plaintiff wishes to oppose the motion he must do so within twenty-one days—that is by June 16, 2021. The plaintiff is free to timely file a response to the motion to dismiss, but the court reminds the plaintiff that he has another option—he may file an amended complaint to try to cure the alleged deficiencies. See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. and Nw. Ind., 786 F3d 510, 522 (7th Cir. 2015) (explaining that

a responsive amendment may avoid the need to decide the motion or reduce the number of issues decided). Fed. R. Civ. P. 15(a)(1) allows the plaintiff to file the amended complaint as a matter of course within twenty-one days after service of the responsive pleading.

The court **ORDERS** that by June 16, 2021 the plaintiff shall file either an amended complaint or a response to the motion to dismiss.

Dated in Milwaukee, Wisconsin this 27th day of May, 2021.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**